

FCC MAIL SECTION

Nov 10 8 30 AM '92

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 92M-1045

In re Applications of)
WESTERN INSPIRATIONAL BROADCASTERS, INC.)
BROAD SPECTRUM COMMUNICATIONS, INC.)
PHOENIX BROADCASTING, INC.)
NINETY-TWO SEVEN, LTD.)
For Construction Permit for a New)
FM Station on Channel 224A in)
Chico, California)

MM DOCKET NO. 92-183³⁰²⁷⁹

File No. BPED-910923MF

File No. BPH-910925ME

File No. BPH-910926ME

File No. BPH-910926MF

MEMORANDUM OPINION AND ORDER

Issued: November 16, 1992; Released: November 17, 1992

1. Under consideration are Joint Request for Approval of Settlement, filed September 8, 1992, supplemented October 2, 1992, by Western Inspirational Broadcasters, Inc., Broad Spectrum Communications, Inc., Phoenix Broadcasting, Inc. and Ninety-Two Seven, Ltd.; Motion for Leave to Amend, filed September 8, 1992 by Phoenix Broadcasting, Inc.; Motion to Delete Contingent Environmental Issue, filed September 8, 1992 by Phoenix Broadcasting, Inc.; and Informal Objection, filed October 9, 1992 by Michael G. Barnes; and Motion to Strike, filed November 9, 1992 by Phoenix Broadcasting, Inc.

Settlement Agreements

2. Phoenix has agreed to reimburse Western's expenses up to \$5,000 in exchange for dismissing its application. Western has itemized expenses of \$2,208. In a second agreement, Phoenix, Spectrum, and Seven have agreed to merge their interests; each will own one-third of a new corporation, Chico FM, Ltd. Phoenix will control, however, with the right to name three of five directors. Three hundred sixty-seven days after Chico FM begins broadcasting on Channel 224A, Spectrum and Seven may exercise options that would result in payments to them for their Chico stock or a four percent interest in Phoenix, which owns two other stations. The cash payment would be based on the appraised value of the station at the time the option is exercised. The Bureau urges that the merger is legitimate and does not represent deferred cash payments to Spectrum and Seven by Phoenix because they will benefit only if the station is successful.

3. The Bureau has indicated that it is investigating Phoenix, which is currently a licensee, and it requests that a grant be made to Chico FM without prejudice to whatever action the Commission might take after the investigation is concluded. The Bureau's request will be granted. The settlement agreements will be approved.

4. Phoenix petitions for leave to amend its application to substitute the new name and ownership provided for in the settlement agreement. The amendment will be accepted. Phoenix petitions for leave to amend to provide an explanation of how it will protect workers from RF radiation. The Bureau's Audio Service Division has reviewed Phoenix's showing and requests that the contingent environmental issue against Phoenix be eliminated.

5. Michael G. Barnes has filed an informal objection to a grant of Phoenix's application. The Bureau has referred Barnes' objection to the Bureau's investigator. Barnes has not moved to intervene in the proceeding and, therefore, he has no right to be heard; only parties to hearings may participate. Moreover, issues in comparative hearings may only be raised with a petition to enlarge; no provision is made in the Commission's hearing rules for nonparty comments. Barnes' informal objection will be dismissed.

ACCORDINGLY, IT IS ORDERED that the joint request for approval of settlement, filed September 8, 1992, supplemented October 2, 1992 by Western Inspirational Broadcasters, Inc., Broad Spectrum Communications, Inc., Phoenix Broadcasting, Inc., and Ninety-Two Seven, Ltd. IS GRANTED.

IT IS FURTHER ORDERED that the contingent environmental issue against Phoenix Broadcasting IS ELIMINATED.

IT IS FURTHER ORDERED that the petition for leave to amend, filed September 8, 1992 by Phoenix Broadcasting, Inc. IS GRANTED and the amendment IS ACCEPTED.


IT IS FURTHER ORDERED that the informal objection, filed October 9, 1992 by Michael G. Barnes IS DISMISSED.

IT IS FURTHER ORDERED that the motion to strike, filed November 9, 1992 by Phoenix Broadcasting, Inc. IS DISMISSED AS MOOT.

IT IS FURTHER ORDERED that the application of Western Inspirational Broadcasters, Inc. (File No. BPED-910923MF) IS DISMISSED WITH PREJUDICE and that the applications of Broad Spectrum Communications, Inc. (File NO. BPH-910925ME) and Ninety-Two Seven, Ltd. (File No. BPH-910926MF) ARE DISMISSED WITH PREJUDICE and the petition to amend the application of Phoenix Broadcasting, Inc. (File No. BPH-910926ME) to change its ownership and name to Chico FM, Ltd. IS GRANTED and ACCEPTED and the application of Chico FM, Ltd. for a construction permit for a new commercial FM on Channel 224A at Chico, California IS GRANTED but conditioned on the outcome of the Mass Media Bureau's investigation of Phoenix and any action it might undertake to determine whether Phoenix is qualified to operate the Chico facility.

IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION


Edward J. Kuhlmann
Administrative Law Judge